

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF TEXAS  
 AUSTIN DIVISION

FRESHUB, INC., FRESHUB, LTD. §  
 §  
 vs. § NO: 1:19-CV-00885-ADA  
 §  
 §  
 AMAZON.COM INC., AMAZON DIGITAL §  
 SERVICES, LLC, PRIME NOW, LLC, §  
 WHOLE FOODS MARKET SERVICES, §  
 INC. §

**JOINT MOTION TO MODIFY SCHEDULING ORDER**

The parties, Plaintiffs Freshub, Inc. and Freshub, Ltd. (collectively, “Freshub”) and Defendants Amazon.com, Inc., Amazon Digital Services, LLC, Prime Now, LLC, and Whole Foods Market Services, Inc. (collectively, “Defendants”), jointly request to modify the Order Governing Proceedings entered in this action on October 24, 2019 (Dkt. No. 40, “Scheduling Order”), in light of the Court’s recent Order Resetting *Markman* Hearing (Dkt. No. 57), which reset the *Markman* hearing in this case for June 19, 2020 at 9:00 a.m. Specifically, the parties request to modify the Scheduling Order as follows, based on the Court’s default deadlines set forth in the Court’s most recent standing Order Governing Proceedings for Patent Cases dated February 2020:

Item	Previous Deadline	Parties’ Agreed Deadline
<i>Markman</i> Hearing	6/19/20 at 9:00 am	No modification requested; ordered in Dkt. No. 57.
Fact Discovery opens; service of Initial Disclosures per Rule 26(a).  [1 week after <i>Markman</i> ]	4/3/20	6/26/20

Deadline to add parties  [6 weeks after <i>Markman</i> ]	5/8/20	7/31/20
Final Infringement and Invalidity Contentions.  [8 weeks after <i>Markman</i> ]	5/22/20	8/14/20
Deadline to amend pleadings. A motion is not required unless the amendment adds patents or claims.  [12 weeks after <i>Markman</i> ]	6/19/20	9/11/20
Close of Fact Discovery  [30 weeks after <i>Markman</i> ]	9/11/20	1/15/21
Opening Expert Reports  [31 weeks after <i>Markman</i> ]	9/18/20	1/22/21
Rebuttal Expert Reports  [35 weeks after <i>Markman</i> ]	10/16/20	2/19/21
Close of Expert Discovery  [38 weeks after <i>Markman</i> ]	11/6/20	3/12/21
Deadline to meet and confer to discuss narrowing the number of claims asserted and prior art references at issue. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.  [39 weeks after <i>Markman</i> ]	11/13/20	3/19/21
Dispositive motion deadline and <i>Daubert</i> motion deadline.  [40 weeks after <i>Markman</i> ]	11/20/20	3/26/21
Serve Pretrial Disclosures (jury instructions, exhibits lists, witness lists, designations)  [42 weeks after <i>Markman</i> ]	12/4/20	4/9/21

Serve objections to pretrial disclosures/rebuttal disclosures  [44 weeks after <i>Markman</i> ]	12/18/20	4/23/21
Serve objections to rebuttal disclosures; file motions <i>in limine</i>  [45 weeks after <i>Markman</i> ]	1/8/21	4/30/21
File Joint Pretrial Order and Pretrial Submissions (jury instructions, exhibits lists, witness lists, designations); file oppositions to motions <i>in limine</i>  [46 weeks after <i>Markman</i> ]	1/15/21	5/7/21
Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i>  [47 weeks after <i>Markman</i> ]	1/22/21	5/14/21
File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i>  [3 business days before Final Pretrial Conference]	2/2/21	5/18/21
Final Pretrial Conference, 9 AM	2/5/21, subject to the Court's availability	5/21/21, subject to the Court's availability
Jury Selection/Trial	3/15/21, subject to the Court's availability	6/14/21, subject to the Court's availability

Date: April 22, 2020

Respectfully submitted,

/s/ Ravi Ranganath

Barry K. Shelton (TX Bar #24055029)  
bshelton@sheltoncoburn.com  
SHELTON COBURN LLP  
311 RR 620 S, Suite 205  
Austin, TX 78734  
Telephone: (512) 263-2165  
Fax: (512) 263-2166

J. David Hadden, CSB No. 176148  
Email: dhadden@fenwick.com  
Saina S. Shamilov, CSB No. 215636  
Email: sshamilov@fenwick.com  
Ravi R. Ranganath  
rranganath@fenwick.com  
Vigen Salmastlian, CSB No. 276846  
Email: vsalmastlian@fenwick.com  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Fax: (650) 938-5200

*Attorneys for Defendants* Amazon.com, Inc.,  
Amazon Digital Services LLC, Prime Now  
LLC, and Whole Foods Market Services,  
Inc.

/s/ John Palmer

John Palmer  
Texas Bar No. 15430600  
palmer@namanhowell.com  
NAMAN HOWELL SMITH & LEE PLLC  
400 Austin Ave., Suite 800, P.O. Box 1470  
Waco, TX 76703  
Telephone: (254) 755-4100  
Fax: (254) 754-6331

Paul J. Andre (*Pro Hac Vice*)  
California Bar No. 196585  
Lisa Kobialka (*Pro Hac Vice*)  
California Bar No. 191404  
James Hannah (*Pro Hac Vice*)  
California Bar No. 237978  
KRAMER LEVIN NAFTALIS  
& FRANKEL LLP  
990 Marsh Road  
Menlo Park, CA 94025  
Telephone: (650) 752-1700  
pandre@kramerlevin.com  
lkobialka@kramerlevin.com  
jhannah@kramerlevin.com

*Attorneys for Plaintiffs*,  
Freshub, Inc. and Freshub, Ltd.

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 22, 2020, a copy of the foregoing was served electronically, via CM/ECF, on all counsel of record who are deemed to have consented such service under the Court's local rules. Any other counsel of record will be served via facsimile and certified mail, return receipt requested.

/s/ John P. Palmer

John P. Palmer